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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In the Matter of:

203-205 NORTH 8TH STREET LOFT, LLC,           Case No. 20-40793-nhl  
Debtor.

- - - - -x

In the Matter of:

3052 BRIGHTON FIRST, LLC,                   Case No. 20-40794-nhl  
Debtor.

- - - - -x

United States Bankruptcy Court  
271-C Cadman Plaza East  
Brooklyn, New York

March 23, 2021

B E F O R E:  
HON. NANCY HERSHEY LORD  
U.S. BANKRUPTCY JUDGE

Confirmation Hearing (20-40793-nhl)

Adj [10] Adj Status Conference (20-40793-nhl)

Adj [113] Motion for Entry of An Order Approving Sale  
Procedures Relating to the Sale of the Debtor's Real Property  
Pursuant To Bankruptcy Code Sections 105(a), 327, 328, 1123 and  
Bankruptcy Rules 2002 and 6004 (20-40793-nhl)

Adj [117] Motion to Authorize/Direct Proponents Motion for  
Entry of an Order Approving the Retention of Rosewood Realty  
Group as Broker for the Sale of the Debtors Real Property filed  
by Jerold C Feuerstein on behalf of 203-205 N 8th Street LLC,  
3052 Brighton 1st Street LLC, North 8th Investor LLC (20-40793-  
nhl)

Adj [119] Amended Motion for Costs/Atty Fees of Receiver filed  
by Jason Sackoor on behalf of Gregory LaSpina, Receiver (RE:  
related document(s) Adj [96] Motion for Costs/Atty Fees filed  
by Gregory LaSpina, Receiver) (20-40793-nhl)

[125] Second Amended Motion for Costs/Atty Fees of Receiver  
filed by Gregory M LaSpina on behalf of Gregory LaSpina,  
Receiver (RE: related document(s) 96 Motion for Costs/Atty Fees

1  
2 filed by receiver Gregory LaSpina, Receiver, 119 Motion for  
3 Costs/Atty Fees filed by receiver Gregory LaSpina, Receiver)  
4 (20-40793-nhl)

5  
6 Confirmation Hearing (20-40794-nhl)

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8 Adj [10] Status Conference (20-40794-nhl)

9  
10 Adj [113] Motion For Entry of An Order (I) Approving the  
11 Retention of Rosewood Realty Group as Broker And (II) Approving  
12 Sale Procedures Relating to the Sale of the Debtor's Real  
13 Property Pursuant To Bankruptcy Code Sections 105(a), 363, 1123  
14 And Bankruptcy Rules 2002 and 6004 (20-40794-nhl)

15  
16 Adj [115] Amended Motion to Authorize/Direct Motion For Entry  
17 of An Order (I) Approving the Retention of Rosewood Realty  
18 Group as Broker And (II) Approving Sale Procedures Relating to  
19 the Sale of the Debtors Real Property Pursuant To Bankruptcy  
20 Code Sections 105(a), 363, 1123 And Bankruptcy Rules 2002 and  
21 6004. (RE: related document(s)[113] Motion to Authorize/Direct  
22 filed by Creditor 3052 Brighton 1st Street II LLC, Creditor  
23 3052 Brighton 1st Street LLC) (20-40794-nhl)

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2 Adj [128] Amended Motion for Costs/Atty Fees of Receiver Filed  
3 by Jason Sackoor on behalf of Gregory LaSpina, Receiver (RE:  
4 related document(s) Adj [95] Motion for Costs/Atty Fees filed  
5 by Gregory LaSpina, Receiver) (20-40794-nhl)

6

7 [136] Second Amended Motion for Costs/Atty Fees of Receiver  
8 filed by Gregory M LaSpina on behalf of Gregory LaSpina,  
9 Receiver (RE: related document(s)95 Motion for Costs/Atty Fees  
10 filed by receiver Gregory LaSpina, Receiver, 128 Motion for  
11 Costs/Atty Fees filed by receiver Gregory LaSpina, Receiver)  
12 (20-40794-nhl)

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BY: NAZAR KHODOROVSKY, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

SHOSHANA CARMEL, Director of 203-205 N8th Street LLC

and North 8th Investor LLC (TELEPHONICALLY)

GREGORY M. LASPINA, Temporary Receiver (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: The next matter in the case of 203-205  
3 North 8th Street Loft, LLC, and 3052 Brighton First, LLC.

4 THE CLERK: Appearances?

5 MR. WEINER: Bruce Weiner, Rosenberg & Musso Weiner,  
6 for the Debtors.

7 MR. FEUERSTEIN: Good afternoon, Your Honor. Jerold  
8 Feuerstein from Kriss & Feuerstein on behalf of the secured  
9 creditors. Dan Zinman from my firm is on the call as well, as  
10 well as Shoshana Carmel, who is here in case we need to make a  
11 proffer with respect to confirmation on North 8th.

12 MR. PICK: And finally, Douglas Pick on behalf of  
13 Leonard Robertson, a proposed trust representative, 3052  
14 Brighton.

15 MR. LASPINA: Good afternoon, Your Honor. Gregory M.  
16 LaSpina, Borchert & LaSpina, temporary court receiver.

17 MR. KHODOROVSKY: Good afternoon, Your Honor. May it  
18 please the Court, Nazar Khodorovsky for the United States  
19 Trustee. Thank you so much, Your Honor.

20 THE COURT: So I'm a little unclear. I mean, I'm  
21 not -- I mean, I know you filed the -- on 203-205 North 8th, I  
22 know you filed a brief in support of confirmation and the like,  
23 but I also understood that this might be adjourned but  
24 obviously wasn't if you have some sort of -- you signed some  
25 settlement papers you are waiting for -- it sounds like you're

1 waiting for a while for payment. Somebody wants to bring me up  
2 to date on that and the--

3 MR. FEUERSTEIN: Your Honor, yeah, this is Jerold  
4 Feuerstein, and Mr. Weiner can confirm this. So we have a  
5 settlement agreement that was signed by the debtor, the debtor  
6 was supposed to wire a certain sum because I don't think it's  
7 appropriate to disclose anything, Your Honor, with respect to  
8 the settlement yet --

9 THE COURT: Right.

10 MR. FEUERSTEIN: -- but supposed to wire a certain sum  
11 in connection with signing that agreement to debtors' counsel.  
12 Debtors' counsel has indicated to us that he has a fed  
13 reference number, but that has not yet confirmed the wire.  
14 We're also told that only half of that sum was being wired  
15 today, and the other half is supposed to be wired on Thursday.

16 The secured creditor at this point, if Your Honor will  
17 indulge us, would like to move forward with our presentation  
18 for confirmation but ask the Court that if this wire hits by  
19 Friday, that Your Honor will agree that the confirmation order  
20 will not be entered, so we can -- so Mr. Weiner can file a  
21 motion under 9019 to confirm the settlement agreement, and we  
22 can confirm the plan and the disclosure statement with respect  
23 to North 8th to include the settlement agreement.

24 THE COURT: Potentially, you want me to do all that  
25 work for nothing, but I have a -- I have a threshold --



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1 MR. KHODOROVSKY: Your Honor?

2 THE COURT: I have a threshold problem. Go ahead,  
3 Mr. -- I have a problem before that on service, which I want to  
4 talk about. Go ahead, Mr. Khodorovsky.

5 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky for  
6 the U.S. Trustee. I apologize, truly, Your Honor. I am a  
7 little bit confused. Is Counsel indicating that if the  
8 settlement is approved, there's going to be another  
9 confirmation hearing on an amended plan, on a further amended  
10 plan? I apologize. I just wanted to clarify.

11 MR. FEUERSTEIN: Well, Your Honor. Yes, because the  
12 way --

13 THE COURT: Can you, please, state your name first  
14 when you speak.

15 MR. FEUERSTEIN: Your Honor, sorry. It's Jerold  
16 Feuerstein. I mean the thought is not necessarily an amended  
17 plan, that if Your Honor does not sign the order, even though  
18 we can go forward with our presentation today, we'd want Your  
19 Honor to sign the order -- not to go forward with our  
20 presentation. Your Honor could hold her decision in abeyance  
21 until we inform the Court as to whether we plan on going  
22 forward with the amended plan based upon the settlement  
23 agreement so we would not have to -- so we'd not have to amend  
24 the plan, as opposed to confirming a plan and then amending it.

25 THE COURT: Mr. Khodorovsky, I would prefer --

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1 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky, for  
2 the U.S. Trustee --

3 THE COURT: -- I was clear before you asked the  
4 question, Mr. Khodorovsky. Now, I'm confused.

5 MR. KHODOROVSKY: Your Honor, I'm also confused very  
6 much, Your Honor. I still am not sure whether there is going  
7 to be a further amended plan filed if the settlement is  
8 approved, or --

9 MR. FEUERSTEIN: Yes.

10 MR. KHODOROVSKY: -- or will it be approved today --

11 MR. FEUERSTEIN: Yes. Yes, Your Honor. The point is,  
12 is that, yes, there will be a further amended plan approved but  
13 not an amendment to the confirmation order. So yes, if the  
14 settlement is in fact -- if the settlement goes through and  
15 Your Honor approves the settlement, we would file an amended  
16 plan.

17 THE COURT: Okay. Let me make this nice and easy.  
18 The service of your solicitation package, on the face of it,  
19 doesn't appear proper to me. I feel like there's a deficiency,  
20 unless I'm missing an affidavit of service. The affidavit of  
21 service at ECS 112 reflects that the solicitation package was  
22 served by mail on December 29th, 2020, upon three parties only.  
23 And they're not parties whom I know. I was going to ask if  
24 they were the commercial tenants, but I have the names.

25 Critically, service was not made upon the debtor, the

1 debtor's counsel, the U.S. Trustee, or creditors. It wasn't  
2 made upon these three entities, again, who are -- let me find  
3 their names. Hold on here a second. Hold on.

4 Ashlynn (ph.), where is it in this write-up? Where  
5 are the names of those three people or entities?

6 THE CLERK: Yes. The name of those three entities  
7 are: REO or R-E-O Properties Corporation (ph.); and then Law  
8 Offices of Vincent S. Wong, care of Sam Snag Tang (ph.); and  
9 then again, Law Offices of Vincent S. Wong, care of T. Ken Lin  
10 (ph.).

11 THE COURT: Okay. So that's the affidavit of service  
12 I have. I don't have the affidavit of service on the debtor,  
13 the debtor's counsel, the U.S. Trustee, the creditors who filed  
14 claims, the creditors who are listed on the schedule. We  
15 looked. We don't see it.

16 MR. FEUERSTEIN: Okay. Just --

17 THE COURT: Now, that could be an easy answer to our  
18 problem.

19 MR. FEUERSTEIN: Well, it could be. I'm going to  
20 defer it to my co-counsel, Mr. Zinman, who took care of this.

21 MR. ZINMAN: Your Honor, for the record, Daniel  
22 Zinman. Yeah. I'm seeing that. I'm sure it was an oversight  
23 because I know that the packages went out and there was, in  
24 fact, only one -- I believe one creditor that was entitled to  
25 vote who did not actually vote but was served the voting

1 version of the package. And then the other parties were served  
2 with the other -- just the materials without the ballot. But I  
3 am looking on the docket that we may have neglected to file the  
4 affidavit of service on that. I am just checking.

5 Yes. So I don't see it on the docket either.

6 THE COURT: Okay. So that's a nice, neat way of,  
7 like, saying we should wait.

8 MR. FEUERSTEIN: Well, I mean, Your Honor, but if it  
9 was served and provided you -- and we actually -- this is  
10 Jerold Feuerstein -- and we provide you with the affidavit of  
11 service, that would seem to be --

12 THE COURT: But why provide me with an affidavit of  
13 service that I don't have for service of a plan that may not  
14 end up being the plan? What, we should go through all of that  
15 today?

16 MR. FEUERSTEIN: Okay. I mean --

17 THE COURT: Okay. I mean I'm -- the other thing I  
18 just want to double-check about here -- all right. The other  
19 thing I'm not clear about is this is only a confirmation of  
20 this case, correct?

21 MR. FEUERSTEIN: I'm sorry, Your Honor. Someone was  
22 typing, so I couldn't hear.

23 THE COURT: There's a lot of noise. This is only  
24 confirmation of this case, correct?

25 MR. FEUERSTEIN: Correct. That's right.

1 THE COURT: That's on 3052 Brighton First by virtue of  
2 this tenant situation needs an amended plan.

3 MR. FEUERSTEIN: Your Honor, this is Jerold  
4 Feuerstein. Yes. The objective there is to amend that plan.  
5 We're waiting to see what happens with respect to the  
6 settlement agreement because that would be part of that plan as  
7 well. Assuming the settlement agreement is entered into, it  
8 will be part of the plan along -- and the disclosure  
9 statement -- along with the issues related to the overcharge.  
10 So this is only for North 8th, Your Honor,

11 THE COURT: All right. Okay. What I'm willing to do  
12 is -- what I'm willing to do today is to raise a couple of  
13 concerns about that, just so we can -- so we don't have to --  
14 we don't have to hear them for the first time next time -- or  
15 questions, actually. So that was one. Who were the three, who  
16 were the three that you did serve, or the two representing  
17 three parties? Who were those folks?

18 MR. ZINMAN: Daniel Zinman, Your Honor. If you'll  
19 bear with me a moment, I have that information. It would have  
20 been -- it would have been served on the debtor, and debtor's  
21 counsel, and --

22 THE COURT: No, no, no.

23 MR. ZINMAN: -- anyone else who is from --

24 THE COURT: Right, there were three names that I just  
25 had my law clerk state.

1 MR. ZINMAN: Oh.

2 THE COURT: Who are the -- who are they?

3 MR. ZINMAN: Your Honor, I believe those are people  
4 that have either filed a notice of appearance, or were listed  
5 on the debtor's schedules, or filed a proof of claim.

6 THE COURT: All right. We have here, though, a  
7 provision for rejecting the nonresidential executory contractor  
8 leases. What do you have here in the way of commercial  
9 tenants? Please remind me. Because you have -- and I don't  
10 know if -- I don't know if the other party to that has notice.  
11 You say an executory contract -- hold on a second. Let me find  
12 it.

13 "Treatment of executory contracts bar date for  
14 rejection claims arise that all unexpired leases to which the  
15 debtor is a party as of the effective date other than  
16 residential leases which were not previously rejected, assumed,  
17 or assumed and assigned by the debtor shall be rejected and  
18 disaffirmed under the plan as of the effective date in  
19 accordance with the provisions and requirements of Section 365  
20 and 1123, unless an executory contract or lease is listed as  
21 assumed and assigned to a successful bidder on a notice to be  
22 filed with the bankruptcy court, with such notice being served  
23 by the proponents on the counterparty to each such executory  
24 contract or unexpired lease no later than 21 days prior to the  
25 effective date."

1 But that would be the notice of the claim, but I would  
2 like the counterparties to be served. Who else do we have  
3 here? What are the nonresidential leases? And we know it's in  
4 commercial and apartment buildings, so there is more than one  
5 commercial tenant, right?

6 MR. ZINMAN: To be honest, Your -- this is Daniel  
7 Zinman. To be honest, I'm not certain. It is described as  
8 such, but I don't know whether there is currently a tenant or  
9 not. Perhaps the receiver, who's on the phone, can address  
10 that.

11 THE COURT: Okay. Mr. LaSpina? Mr. LaSpina?

12 MR. LASPINA: Your Honor, there are two buildings that  
13 are a part of 203-205 North 8th Street. It's mixed use and  
14 there is a commercial tenant still in the building.

15 THE COURT: All right. Do you know the name of the  
16 commercial tenant?

17 MR. LASPINA: I don't, Your Honor. I'm sure I have  
18 records that I don't have with me and would take me a while to  
19 access on that. I think my operating statement has a list.  
20 Let me see. Fusion Group (ph.). Yeah, I'm looking at --

21 THE COURT: So I think whoever -- if you're looking to  
22 reject that lease, or you're not sure, I think that that party  
23 should be served, since you're doing it in the plan.

24 MR. LASPINA: Your Honor, what we can do is, it's not  
25 really -- it doesn't need to be assumed or rejected until the

1 sale is approved. So what we can do is carve that out of the  
2 confirmation order and indicate that there'll be a separate  
3 notice in connection with that lease that will be filed -- a  
4 separate motion that will be filed prior to it being assumed or  
5 rejected. That process would not otherwise slow down the  
6 process in this case.

7 THE COURT: So in the plan, you're not going to either  
8 assume or reject it; you're going to say that you're going to  
9 file a motion later on in connection with the sale?

10 MR. LASPINA: Well, in the confirmation order, we can  
11 provide that, Your Honor.

12 THE COURT: Right. You can't --

13 MR. LASPINA: And the confirmation order seems to --

14 THE COURT: Wait, so wait, but the question is, can  
15 you do that? Once you've confirmed a plan, and there's an  
16 order of confirmation, right, can you thereafter query? I  
17 don't know the answer to this. Can you --

18 MR. LASPINA: But Your Honor --

19 MR. FEUERSTEIN: So we have look at the issue -- this  
20 is Jerold Feuerstein -- but I think you could do that prior  
21 to -- I think you can make that decision prior to the effective  
22 date, and this plan is not going effective for quite some time.

23 THE COURT: Well, but that's different. I mean, I  
24 thought that you had to assume or reject -- I thought that the  
25 plan was the last time that you could do that. I mean, I'll be



1 the first one to say if that's wrong. I mean, I'll admit it if  
2 somebody tells me it's wrong. But I thought that you had --  
3 basically, that's why people do that in the plan; they have to  
4 say one way or the other in the plan. I understand it doesn't  
5 go effective till the effective date, but if the plan has the  
6 effect of a rejection or an assumption, it seems to me that the  
7 party to that should have notice. So I'm pointing that out.  
8 I'm pointing it out; I'm not --

9 MR. ZINMAN: Your Honor?

10 THE COURT: I'm pointing it out.

11 MR. ZINMAN: Yeah. Your Honor? Your Honor, it's, for  
12 the record, Daniel Zinman. I have done other plans in which  
13 there was a sale process after confirmation in which -- in  
14 other situations, it's held out to essentially the potential  
15 purchaser would decide we're not doing it here, but that has  
16 been done in other cases in which the potential purchaser  
17 decides at least to give an option to the potential purchaser  
18 to assume a lease, so that way, buyers could have that impact.  
19 That's usually in a more -- with a lot of commercial (audio  
20 interference) where some may be more valuable leases than  
21 others.

22 In here, all we're doing -- all we'd be doing is  
23 basically providing that notice under the applicable rule and  
24 the time frame required under the bankruptcy rules and the  
25 local rules at some point in the future. I think it's fine as

1 long as it's explicit in the confirmation order that that issue  
2 is being kind of pointed to a separate order to come.

3 THE COURT: You could go with that. Okay. I don't  
4 know that off the top of my head. The other thing, or some  
5 other source, too, I don't quite understand, and I don't  
6 know -- Mr. Weiner, I don't think, has weighed in on this.  
7 Maybe it's because he didn't -- he would have had to if we're  
8 going ahead.

9 "Preservation of rights of action" -- interesting --  
10 provides that, Article 6.5: "On the effective date, all causes  
11 of action shall be controlled by the proponents on behalf of  
12 the debtor's estate" -- that's (a), "On the effective date,  
13 all" -- (a) -- "all causes of action shall be controlled by the  
14 proponents on behalf of the debtor's estate.

15 "(B) All privileges, including attorney-client and  
16 attorney work product, and all rights under any confidentiality  
17 agreement owned by the debtor on the effective date shall  
18 transfer to the proponent, and the proponent shall have the  
19 right to enforce or waive such privileges and rights, as they  
20 see fit in their discretion."

21 Now, I used to be a Chapter 7 trustee in a prior life,  
22 and I know something about when a trustee has that right in a  
23 Chapter 7 to waive the privilege, but this one is new on me in  
24 a plan provision. We'll address that the next time. And then  
25 I also was a little -- "surrender of instruments" I was a

1 little bit unclear about, but the other two were clearly a bit  
2 of a head-scratcher for me.

3 Do you see that, Mr. Weiner?

4 MR. WEINER: Yes, Your Honor.

5 THE COURT: You have any problem with it?

6 MR. WEINER: Again, what I'm really focused on,  
7 getting this deal done, which it looks like it's going to  
8 happen, and the deal --

9 THE COURT: All right. Well, the thing that --

10 MR. WEINER: So if the deal isn't done, then there's a  
11 lot of other things that are happening here that are not  
12 favorable to the debtor, so.

13 THE COURT: Well, it's not a question of not being  
14 favorable to the debtor. Lots of times --

15 MR. WEINER: Yeah.

16 THE COURT: -- lots of times, things -- a competing  
17 plan by a creditor is not favorable to the debtor.

18 MR. WEINER: Right.

19 THE COURT: I'm just not clear why we would need the  
20 waiver of the attorney-client privilege and work product, and  
21 I'm not sure of where I have the power to be doing that because  
22 I don't know why they have the power to get it. So that's a  
23 question.

24 MR. ZINMAN: Your Honor, it's Daniel Zinman, for the  
25 record. This is boilerplate that I've seen and used in many

1 plans. Usually, when there is a known cause of action, or  
2 causes of action, and there are -- I'm not aware of any here,  
3 but if there are -- if there were in the case, say, large  
4 preferences of fraudulent transfers and the like, the transfer  
5 of the privilege is important because otherwise, the proponent  
6 could not bring the action on behalf of the estate effectively  
7 unless they had access to the debtor's confidential material.

8 That's basically how that runs. In this case, we all  
9 know from the Orange County decision from --

10 THE COURT: Wait a minute. Wait a minute. Wait a  
11 minute. You would need -- you would need possession of --  
12 preferences, you need possession of the books and records. For  
13 fraudulent conveyances, too, you would need possession of  
14 ledgers, books, and records. I'm trying to understand why you  
15 get to waive the privilege and the work product.

16 MR. ZINMAN: Your Honor, if I may? To use as an  
17 example, in the Adelphia Communications case, there were causes  
18 of action against approximately 435 banks which were  
19 transferred to a liquidating trust on the confirmation of that  
20 plan. Those causes of action were for around ten billion  
21 dollars, and without the transfer of the privileges, we  
22 couldn't proceed in bringing those and litigating those causes  
23 of action, and it's a simple --

24 THE COURT: Well, this is not Adelphia -- this is  
25 not --

1 MR. ZINMAN: And I understand that. So if --

2 THE COURT: -- Adelphia, and I don't want to be in a  
3 situation where because it's boilerplate in the Adelphia case,  
4 it finds its way into an order of confirmation, if it's more a  
5 little single-asset real estate case in Brooklyn, so that all  
6 of a sudden it's boilerplate for the next Chapter 11 case, and  
7 the sleepy old (audio interference).

8 MR. ZINMAN: Your Honor? Your Honor, if I may? You  
9 are correct that we would basically only need books and records  
10 if we were bringing only a preference or a constructive  
11 fraudulent transfer. If there were to be an intentional  
12 fraudulent transfer, then materials from the debtor could be  
13 very critical in establishing intent, in particular as it's the  
14 debtors -- it's the transferor's intent that matters for an  
15 intentional fraudulent transfer. I'm using that, by the way of  
16 example.

17 THE COURT: I understand, but I'm not (audio  
18 interference) --

19 MR. ZINMAN: In this case, I'm not aware of any such  
20 action.

21 THE COURT: -- that you legally have -- I mean, again.  
22 I know the Weintraub case. As a 7 trustee, I did this, less to  
23 the shock of the principal in a case called Hamilton  
24 Reproductions (ph.) in 6 EDC (ph.) New York, and people got  
25 into good (audio interference) by the office. And I've yet to

1 see it in any case that I have confirmed and I -- okay.

2 And then again, you quote Adelpia because we have the  
3 issue which, again, lists -- in this case, I might use my  
4 discretion to confirm the plan, but you do have the issue of  
5 having no vote. You have no votes from an impaired class.  
6 You're taking the no-vote as a vote of a class. So I  
7 understand what you're doing. I know that the case law is  
8 split, and I know the cases that you've cited for the  
9 proposition.

10 MR. FEUERSTEIN: Your Honor, the secured creditor is  
11 an impaired creditor.

12 THE COURT: No. But you didn't vote. You didn't vote  
13 because you're deemed to accept it.

14 MR. ZINMAN: Well, Your Honor, we didn't fill out a  
15 ballot simply -- and we put the plan that way -- it's Daniel  
16 Zinman. Sorry. It's simply the plan to save the  
17 administrative task of sending ourselves the ballot and filling  
18 it out. Since we're the proponent, you know we vote in favor.  
19 That doesn't make us unimpaired, the plan and the disclosure  
20 statement is very clear that the secured creditors are  
21 impaired.

22 The no-vote comes from class 6, the unsecured  
23 creditors. None of them voted. So then we cited the Tenth  
24 Circuit case for the idea that a no-vote should be deemed to be  
25 accepted.

1 THE COURT: No. I know, that's --

2 MR. ZINMAN: So in the absence of that we can cram  
3 down -- we could cram down the unsupported creditor class.

4 THE COURT: Yes, you can. You can create an example  
5 with that one. Yes, you can. Okay.

6 So with all that being said, I think that maybe it  
7 makes a lot more sense to come back in a week or so, or  
8 whenever you're able (audio interference).

9 Mr. Weiner, what's the story with the principal's  
10 money here, if it is the principal?

11 MR. WEINER: It still hasn't hit my account.

12 MR. FEUERSTEIN: But you said you had fed reference  
13 number, correct?

14 MR. WEINER: My client emailed me a fed reference  
15 number which I passed on to Mr. Feuerstein, but I'm refreshing  
16 my account as we speak, and it still hasn't hit my account.

17 THE COURT: Well, I don't know. Let me just ask Mr.  
18 Khodorovsky if he had anything to say, just in advance of the  
19 adjourn date or confirmation.

20 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky for  
21 the U.S. Trustee. I do want to briefly note that there's a  
22 strange situation in the 203-205 case, in that the debtor has  
23 filed its February and January operating reports but never  
24 filed December. Thank you, Your Honor.

25 THE COURT: Okay.

1 MR. ZINMAN: Your Honor, Daniel Zinman. If I may  
2 request, Ms. Carmel from my client --

3 MR. FEUERSTEIN: I just told her to drop off the line,  
4 Your Honor.

5 MR. ZINMAN: Oh.

6 MR. FEUERSTEIN: Sorry. I didn't tell you that.

7 MR. ZINMAN: Too late. I was going to try and get her  
8 testimony in while when was here, but I guess it's too late.  
9 We'll deal with it on the adjourn date.

10 THE COURT: So when you say "testimony", I have not  
11 been confirming on testimony because I have to do that via  
12 Zoom. I've been confirming on a proffer, assuming there's no  
13 objection.

14 MR. ZINMAN: Yes, you --

15 MR. FEUERSTEIN: Your Honor, it's Jerold Feuerstein.  
16 In case you wanted -- in case there was any need for cross-  
17 examination, the proffer is her declaration. That's why we had  
18 on the phone, just in case.

19 THE COURT: Okay. Okay. And then, let me just see.  
20 So you're going to get me an affidavit of service. I mean,  
21 this is actually quite simple. You're selling the property in  
22 the plan, though a plan. This is not challenging, right? Am I  
23 missing something here?

24 MR. FEUERSTEIN: All right. I don't think it is, Your  
25 Honor.



1 MR. ZINMAN: Yes, that's correct, Your Honor.

2 THE COURT: Okay. What I did see is, were you -- is  
3 there a fixed amount for your -- I don't remember this, and we  
4 may have talked about it. What's the current situation?

5 MR. ZINMAN: Your Honor, Daniel Zinman. Yes, that is  
6 currently the one like, other than the date, in the proposed  
7 bidding procedures. The credit bid amount would be the full  
8 amount of our claim through the date of the auction, which  
9 presumably would be a few months now. I have done some  
10 calculations, and if you assume, say, April 30th, as an auction  
11 date, which is probably a little aggressive, but it was a nice,  
12 round number to use, the claim amount with post-petition  
13 interest at the default rate would be \$24,554,852.01. We would  
14 need to add to that legal fees, and that would be the amount of  
15 the credit bid. The first overbid would be 100,000 dollars  
16 above that amount.

17 THE COURT: Okay. All right, we're going to take an  
18 adjournment. You're going to get me an affidavit of service.  
19 We're going to look at the question of the assumption and  
20 rejection before fulfillment. And again, it would be -- we did  
21 check out -- we do have the name of the commercial -- we think  
22 we have the name of the current commercial tenant.

23 MR. FEUERSTEIN: Well, I mean -- it's Mr.  
24 Feuerstein -- if Mr. LaSpina can get us that lease that we can  
25 confirm, that would be helpful.

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1 THE COURT: Well, and could it be Gather --

2 MR. LASPINA: I actually --

3 THE COURT: -- Gather Nail & Spa? Is that it?

4 Gather Nail & Spa?

5 MR. LASPINA: -- Nail & Spa, they're in a ten-year  
6 lease that predated us, and they're current on their rent, and  
7 they're intact.

8 THE COURT: G-A-T-H-E-R Nail & Spa.

9 MR. LASPINA: We have the rent roll with -- Your  
10 Honor, Gregory LaSpina -- G.N. Spa (ph.) Incorporated; I guess  
11 that's the entity that it operates.

12 THE COURT: Oh, okay. Either "Gather" or "GN"; it's  
13 not clear to me. Maybe it's that G-A-T-H-E-R, and I just don't  
14 know. Nail & Spa, so Nail & Spa. Is that the only commercial  
15 tenant?

16 MR. LASPINA: For 203-205.

17 THE COURT: The whole property?

18 MR. LASPINA: Yes.

19 THE COURT: Okay. All right. Anybody else want to  
20 add anything on this?

21 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky, for  
22 the U.S. Trustee. I just wanted to inquire if Your Honor --  
23 before adjourning the matter, if Your Honor would also be  
24 hearing Mr. LaSpina's fee application, his amended fee  
25 application. Thank you, Your Honor.

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1 THE COURT: Yeah. I'm prepared to do that, yeah. I'm  
2 not going anywhere. I also have to deal with the other case.  
3 So if we want to talk, let's talk about the other case for a  
4 minute, 3052 Brighton First. Status?

5 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky, for  
6 the U.S. Trustee. The 3052 debtor is current with the U.S.  
7 Trustee fees and is current with operating reports. Thank you,  
8 Your Honor.

9 THE COURT: Okay. Anybody want to be heard on this.

10 MR. FEUERSTEIN: Your Honor, Jerold Feuerstein. As I  
11 indicated before in connection with the North 8th case, we are  
12 waiting for the settlement agreement, which would be  
13 incorporated into an amended plan, which would also incorporate  
14 the issues with respect to the tenant issues as represented by  
15 Mr. Pick. When we know that, we will either file an amendment  
16 with respect to the settlement issue, or we'll just file an  
17 amendment and amend them into the disclosure statement with  
18 respect to overcharge.

19 THE COURT: Okay. All right. Now, let's go -- Mr.  
20 Pick, before I turn to the receiver's fee app, anything?

21 MR. PICK: Yes. I'm here, Judge.

22 THE COURT: Did you want to add anything?

23 MR. PICK: Oh, no. I'm sorry, Judge. Nothing to add;  
24 I apologize.

25 THE COURT: Okay. All right. We've got the second

1 amended motion for each of the properties, correct, for Mr.  
2 LaSpina, correct?

3 MR. LASPINA: Yes, Your Honor. It's Gregory LaSpina.

4 MR. PICK: And Judge, Doug Pick. I apologize. We  
5 have uploaded the two orders that haven't been signed yet with  
6 respect to the stay release, and with respect to the claims.

7 THE COURT: Okay. So here's my first problem. And I  
8 really don't mean to be difficult. People who come before me a  
9 lot, they tell me I'm not difficult. I may be difficult this  
10 time. You were supposed to timely serve these, and if you  
11 couldn't get them served in time, you were supposed to give me  
12 an order shortening the time, and you didn't do that.

13 So right now, I have amended applications that were  
14 untimely served. The March 4th hearing, I so ordered that time  
15 for service, normally 21 plus 3, would be shortened provided  
16 that they be filed and served by March 8th. So I did that;  
17 however, both applications were filed and served two days later  
18 on March 10th.

19 MR. LASPINA: Yes, Your Honor. Thank you. Gregory  
20 LaSpina. Your Honor, in our last conversation, you indicated  
21 that Court would take care of the shortened order. You  
22 actually sort of indicated that almost --

23 THE COURT: Right.

24 MR. LASPINA: -- as a favor.

25 THE COURT: Right.

1 MR. LASPINA: So, that's why I didn't generate for the  
2 shortened --

3 THE COURT: Right, but they you didn't get filed, but  
4 I said the 8th, transcript at 39:18-25, and they didn't get  
5 filed till the 10th, and so --

6 MR. LASPINA: Yeah, actually I never saw an order,  
7 Your Honor, providing that March 10th, date. Obviously I knew  
8 it was to be expedited --

9 THE COURT: No, March 8th. No, what I said on the  
10 record that I would shorten the time, provided that they were  
11 filed and served by March 8th. I have a transcript reference.  
12 But they, in fact, were filed and served two days later on  
13 March 10th. That's what I'm trying to say. I didn't do an  
14 order. I so directed, but you didn't do it by the 8th. So  
15 then that's fine.

16 We've got to -- but assuming I'm willing to overlook  
17 that, there were still issues I have with the second amended  
18 application. In both, again, you're seeking in the same  
19 amount, and using, in my view, an incorrect messaging  
20 calculating the amount of the insurance commission under CPLR  
21 8004. Got all the cases, but again, you're seeking an award  
22 for North 8th, of 66,199.20, representing 5 percent of  
23 1,323,984.03, calculated based on the aggregate of the total  
24 receipts of 732,740.16, and the total disbursement of  
25 591,243.87.

1           At 3052 Brighton First, again, you're seeking an award  
2 of 163,953.04, representing five percent of \$3,279,060.70,  
3 calculated based on the aggregate of the total receipts of  
4 1,824,397.70, and total disbursement of 1,454,663, -- using the  
5 aggregate amount of receipts and disbursements resulted in a  
6 substantially higher amount than you would otherwise be  
7 entitled to under CPLR 8004.

8           MR. LASPINA: And let's just -- all right, Your Honor.  
9 If I may? Gregory LaSpina.

10          THE COURT: Yeah. Mr. LaSpina, I told you about the  
11 cases, and you told me about COVID. But I don't think -- I  
12 don't think the case that you cited is -- I think is totally  
13 distinguishable for a whole host of reasons. And everybody is  
14 dealing with COVID, so there's nothing unique about COVID, so.

15          MR. LASPINA: Your Honor, Gregory LaSpina. I think  
16 when I was last before the Court on this issue, the Court asked  
17 me to set forth what made the receivership different in COVID.  
18 Yes, everyone is dealing with COVID, but I went on for two or  
19 three pages about what services or enhanced services were  
20 provided to the receivership as a result of CDC guidelines, and  
21 as a result of vendors having to be safe, and as a result of  
22 more service having to be provided: people at home, more  
23 waste, more garbage.

24          I think there are special circumstances here. I did  
25 find a case from Westchester where the court did, in fact,

1 weigh and credited the nature and value of services beyond the  
2 statutory amount. I think there's ample facts here to warrant  
3 special circumstances and unique and extraordinary services.  
4 Moreover, the time during a pandemic that I've committed to the  
5 legal part of this case, for which I am not receiving  
6 compensation or haven't sought it, but that has a value.

7 All of these things in totality have enhanced the  
8 bankruptcy estate. We're talking about a significant amount of  
9 money that may be a return to equity for someone that reposes  
10 in their depository accounts, significant amounts of rent. You  
11 had asked-- you had asked whether or not there were any cases.  
12 Yes, you found --

13 THE COURT: Right.

14 MR. LASPINA: -- a case that is being distinguished,  
15 but frankly, all of those cases there's either -- there was  
16 either something going on that there's a fight between --  
17 amongst the parties on the receiver's fees. We have a  
18 situation here, where neither the secured, nor the debtor, are  
19 objecting to the fees being sought. And I know that's not  
20 binding on the Court, but to me, that's compelling.

21 THE COURT: Hang on a minute. So in AJ Partners, that  
22 was a very, very -- I mean, a huge percentage, but that was a  
23 very small amount of money.

24 MR. LASPINA: Correct. Yes, Your Honor. I agree.

25 THE COURT: The court awarded \$5,100 when the statute

1 called for \$893.47. It wasn't -- we're not talking about tens  
2 and tens and tens of thousands of dollars, as we are here. So  
3 that's one thing. But did you -- there's a property manager  
4 for these properties, is there not, separate and apart, and  
5 compensated separate and apart from you as the receiver?

6 MR. LASPINA: Yes, Your Honor, pursuant to a  
7 management agreement, and there's no duplicate services between  
8 what I do and what they do.

9 THE COURT: But that was -- I guess, again, when  
10 you're telling me about COVID, if there's a property manager  
11 appointed for both properties, and the property manager is  
12 being compensated for services as a property manager, and  
13 you're -- hang on a minute -- and you are calculating your --  
14 part of your statutory commission includes the payments to the  
15 property manager, correct?

16 MR. LASPINA: Yes. There's a management agreement,  
17 and we work as a team, but virtually, they don't do anything  
18 unless they consult with me. I'm involved in every --  
19 whether it be someone who is coming in to fix a --

20 THE COURT: But wait. But wait a minute. December  
21 2020 operating statements reflect that management fees the  
22 total amounts for 2020 as follows: 43,155.76 in 203-205 North  
23 and 88,158.17 in 3052 Brighton. The other distinction is that,  
24 again, the AJ Partners' properties were inner-city properties  
25 and again, the Court made a finding that there was a public-



1 policy issue at stake as well.

2 The preservation of aging possibly on housing stocks  
3 serving a significant part of the population of Westchester  
4 County who otherwise may require public-subsidized housing or  
5 risk homelessness. It would be a stretch here to say that  
6 public-policy issues were at stake.

7 MR. LASPINA: Your Honor, I mean, I understood the  
8 Court's decision there in that case. The principle that I  
9 extracted is a principle that could easily apply here. I mean,  
10 I don't know if we evaluate buildings on what's more inner city  
11 than another. We have a property that has forty residential  
12 units and ten commercial units in Brighton First, in Brighton  
13 First in Brooklyn, and North 8th is Williamsburg, and there's  
14 seventeen units in those buildings.

15 So I mean, is not a Hamptons' property that we're  
16 managing. They're very demanding properties in their own  
17 right.

18 THE COURT: But again, where you've got management  
19 companies in place, you are seeking two times over the  
20 statutory entitlement, and barring that --

21 MR. LASPINA: Your Honor, when I was first appointed  
22 and I made my motion pursuant to Part 36 in this court for  
23 secondary appointments -- when I made that application to the  
24 court, I asked for a property manager, and I asked that instead  
25 of having the property manager wait for fees at the end of the

1 receivership, which no manager -- very managers will do that  
2 because the cash flow, the commitment of time, and resources.

3 So going into the state court, and asking for the  
4 appointment, I had a management agreement, and the secured  
5 lender didn't balk at the management agreement. That's the  
6 nature of the beast. I have other buildings where there are  
7 management agreements. And again, it's not duplicate services.  
8 I scrutinize--

9 THE COURT: Why would the secured creditor balk? I  
10 don't why the secured creditor would balk. The secured  
11 creditor is going to -- the secured creditor is not coming out  
12 of the secured creditor's side right now.

13 MR. LASPINA: I know. But I wouldn't expect anyone to  
14 think that the building would have a manager without  
15 compensation to the managers for what they do.

16 THE COURT: Okay. There are many -- you cited one  
17 case to me which was clearly distinguishable, didn't have a  
18 management agreement, and I have numerous cases that say  
19 otherwise.

20 MR. LASPINA: And Your Honor, not to be difficult, and  
21 I thank you for your time. None of those cases occurred during  
22 a pandemic.

23 THE COURT: I will take it under advisement. I'll  
24 take them under advisement, and I'll determine if there's  
25 anything that I think you should be getting over and above. If

1 you know of -- if you have any -- I'll let you supplement  
2 this -- if you know of any other situations in state court,  
3 where the state court is granting commissions to receivers with  
4 some kind of a pandemic addition, you can let me know.

5 But lots and lots and lots of cases; you've given me  
6 one that's totally distinguishable, and I've got many, many,  
7 that say the opposite.

8 MR. LASPINA: Gregory LaSpina. Yes, thank you, Your  
9 Honor. In the state court this issue hasn't really come up  
10 because the state courts have put a lot of the foreclosure  
11 activity on a stay or moratorium calendar, where they haven't  
12 been committing --

13 THE COURT: No. But what about the -- but there were  
14 existing receiverships in the state court, and don't those  
15 receive --

16 MR. LASPINA: I have existing receiverships in the  
17 state court. I have property --

18 THE COURT: And don't you go in periodically to get  
19 paid?

20 MR. LASPINA: I have property managers -- Your Honor,  
21 I would say ninety percent of the time, I have compensated with  
22 five percent monies in and five percent monies out. That's why  
23 I say, some of the cases that -- I know the case law is setting  
24 aside the pandemic nature of things. The case law that you  
25 have graciously directed me to, and I independently researched,

1 they're usually situations where it's unique onto itself,  
2 whether it be someone managing a strip mall situation in an  
3 inner-city property, or a fight between a receiver who's also a  
4 principal in the management company and is collecting with both  
5 hands in that instance.

6 Those cases are all nuanced. Even by stipulation, I  
7 have received five percent in and five percent out in the  
8 bankruptcy court. Not before Your Honor. This is the first  
9 time that I've had a case before Your Honor, but again, I think  
10 the fact that -- the secured lenders, they fight with the  
11 receivers all the time. They're not a doormat for the  
12 receiver. If they think there's --

13 THE COURT: Again, if Mr. Feuerstein's client wants to  
14 pay you, and it's not charged to the estate, it sounds like  
15 a -- sounds like a good plan to me. But that's not what's  
16 happening here. They're going to get their -- they're going to  
17 get their -- again, their claim and whatever, of interest or  
18 whatever they settle on, and this is above and beyond that.  
19 And again, I've had even more cases than I had last time.

20 So if you can find me a situation where anyone has  
21 given a benefit -- now, the management companies here are  
22 unrelated to you or related to you?

23 MR. LASPINA: Unrelated to me. I have to go into the  
24 state court and make an application, and they have to be on a  
25 Part 36 list, an approved list, and I don't --

1 THE COURT: Okay. So they're unrelated, right?

2 MR. LASPINA: Unrelated. Unrelated to me.

3 THE COURT: Okay. And isn't it the management company  
4 that would have the additional, to the extent that there is  
5 work? And I'll recognize that there may be additional -- it  
6 depends upon the building; it depends upon whether everybody  
7 fled the building to go elsewhere or everyone's in the  
8 building. But yes, there could be more work for -- there could  
9 be work for building staff. But what I'm trying to understand  
10 is, why is that not falling on the management company, and why  
11 is that falling on you as the receiver?

12 MR. LASPINA: Gregory LaSpina. Thank you, Your Honor.  
13 This, of course, is a collaboration when, I think earlier on,  
14 one of your earlier cases, you talked about all kinds of  
15 forbearance agreements. That's happening in all buildings. So  
16 managing agent, although they're my agent for purposes of  
17 building service and all, when they get a request from a tenant  
18 for a forbearance, or I can pay -- things are tough, I could  
19 pay half the rent now; can you take the other half in two or  
20 three weeks? They don't make those decisions without my  
21 consent to those. So when I say that all --

22 THE COURT: Okay. Just so we're clear. Okay, so the  
23 kind of additional work you're talking about, has to do with  
24 how rents are paid, or not paid, and what the collection  
25 situation is, and keeping up with law on moratorium presumably,

1 and dealing with the question of communicating for forbearance  
2 request. But as far as the work, additional garbage being --  
3 all of that, that falls on the management committee, not on --  
4 a management company, not on you.

5 MR. LASPINA: But Your Honor, I'll give you an  
6 example. When they have to -- when they have to purchase PPP  
7 equipment, when they have to -- their resources have to be  
8 stretched in different directions, and they're asking for a  
9 priority of needs, again, they will contact me and say what  
10 needs to be paid first?

11 These are things -- these are boots -- this is boots  
12 on the ground. I'm not the air traffic controller. I am not  
13 going to the building and applying disinfectant to the walls  
14 myself. That is some -- but the managers have to retain  
15 vendors to do that. They have to make sure that their tenants  
16 are safe. So there's no aspect of this. I mean, it's like a  
17 CEO of a corporation doesn't make sure that there's adequate  
18 paper dispensers in the restrooms, but the responsibility.

19 And I wouldn't have it any other way. I don't allow  
20 my property managers to make decisions without consultation  
21 because at the end of the day, and I hate to use that again,  
22 it's my responsibility. I have to discharge my duties. And  
23 the unique circumstances dictated by pandemic -- signage,  
24 elevator use -- I was a party to all of those decisions. So  
25 there probably is no state court case that is awarded fees

1 where someone articulated the unique circumstances driven by  
2 the COVID-19 crisis.

3 THE COURT: Okay. Well, if there's not, there's not.  
4 But I'm looking at appellate division law, I'm looking at a lot  
5 of law, and it's not old law, that says the way you've  
6 calculated it is not the way that's acceptable, including  
7 bankruptcy case. Indeed, both federal, district, and  
8 bankruptcy courts have adopted this interpretation of CPLR  
9 8004, so as not to permit or receive an award or commissions of  
10 the percentage calculated using the aggregate amount of the  
11 amounts received plus the amounts disbursed.

12 And you've got a Southern District case, In re 1415  
13 West 150th LLC, awarding final commission to continued receiver  
14 commission equal to five percent of total income received.  
15 You've got In re Studio # 54 Disco, Inc. in the Eastern  
16 District. That's an older case, 21 BR 308. We've got a more  
17 recent case which is not a -- I don't believe it's a bankruptcy  
18 case, but it's in the Eastern District, Gasser v. Infanti  
19 International, Inc., at 358 F.2d 176. And then -- just a  
20 minute -- and then you cited to me a case which we thought  
21 stood for the opposite proposition, the New York Bank for  
22 Savings v. Jamaica Towers West.

23 So I mean, I'll take it as submitted, but we've got an  
24 uphill battle here. Okay. I'll mark it submitted. Let's see  
25 one more --

1 MR. LASPINA: Yes. Thank you, Your Honor.

2 THE COURT: We'll see when we're -- we'll see when  
3 we're coming back. Do you want to short adjournment, to make  
4 sure that the money is coming? Or you want time to mend  
5 things? Or what do you want here?

6 MR. FEUERSTEIN: Your Honor, this is Jerold  
7 Feuerstein. The money's never come in, I mean, we probably  
8 want to move forward to confirmation. I obviously want to  
9 check this issue with assumption within -- with the lease, but  
10 we'd like a relatively short date. And hopefully, that based  
11 upon the fact that Mr. Weiner has the fed reference number, the  
12 money is coming in. So we may not need it, but we'd like to  
13 keep a very short string on this.

14 THE COURT: Wait just a minute. My computer closed  
15 up, so give me a minute. Okay. All right, I'm back in  
16 business here.

17 Okay. Ms. Howard?

18 THE CLERK: Yes, Judge.

19 THE COURT: Are we keeping all of them together, Mr.  
20 Feuerstein?

21 MR. FEUERSTEIN: I think we should, at least for  
22 control, I would imagine, Your Honor, because we can report  
23 back to the Court with what happens with respect to the  
24 settlement, and then we can go from there. I mean, just at  
25 least a status conference, I suppose, on Brighton; it can't



1 hurt.

2 THE COURT: All right. Let me see. I'm looking.

3 Ms. Howard, can we fit it on at 11 o'clock on April  
4 13th? Or are we better off not doing that?

5 THE CLERK: Hold one second. Some post-confirmation  
6 status hearings, and they might go fast.

7 THE COURT: I'm just looking to see what we've already  
8 set to that date from earlier. Okay.

9 THE CLERK: I mean, we could but it's going to be -- I  
10 mean, it's going to take some time.

11 THE COURT: Yeah. We've got two things at 11:30.  
12 Let's see, what time? Well, we could put it on 11:30.

13 THE CLERK: After the other matters?

14 THE COURT: After the other matters.

15 THE CLERK: Okay.

16 MR. KHODOROVSKY: I apologize, Your Honor. This is  
17 Nazar Khodorovsky for the U.S. Trustee. Which date is Your  
18 Honor proposing to call --

19 THE COURT: Don't apologize yet because we're still  
20 negotiating. April 13th. Does that work for both, April 13th?

21 MR. FEUERSTEIN: I have another matter before Your  
22 Honor at that time, so it works for me.

23 THE COURT: It works for --

24 MR. ZINMAN: I've got several -- I've got several  
25 matters on before Your Honor that date morning and afternoon.

1 THE COURT: Okay. I'll put this open; I'm booking at  
2 11:30.

3 MR. ZINMAN: 11:30?

4 THE COURT: You are in the afternoon?

5 MR. ZINMAN: I have matters both in the morning and  
6 the afternoon before you, Your Honor.

7 THE COURT: Now, Mr. Feuerstein, when are you?

8 MR. FEUERSTEIN: I'm on for you at 11:30 as well, Your  
9 Honor.

10 THE COURT: Oh. Okay.

11 MR. ZINMAN: Well, my list, I have matters on at 10:00  
12 and at 10:30, so by 11:30, I can handle 11:30.

13 THE COURT: All right then. Basically, I'm glad, I  
14 believe everybody is happy, everybody but us. April 13. It's  
15 okay. It's at 11:30, all matters.

16 MR. KHODOROVSKY: I apologize, Your Honor. Nazar  
17 Khodorovsky for the U.S. again; I couldn't hear through the  
18 noise. I apologize for that. Does Your Honor record it as  
19 13th of April at 11:30 for both cases? Thank you, Your Honor.  
20 I apologize for that.

21 THE COURT: Yes. Both cases, all matters.

22 MR. KHODOROVSKY: Thank you.

23 MR. ZINMAN: Your Honor, it's Dan -- Your Honor, it's  
24 Daniel Zinman. While you were dealing with the receiver. We  
25 were able to locate the certificate of service that you were

1 looking for. It's actually docket number 111, and as I recall,  
2 I think what it was is we discovered a few entities had not  
3 been served that should have been, and why there was a second  
4 affidavit of service; that was the one Your Honor responded to.  
5 I had forgotten that until I saw this.

6 THE COURT: Okay.

7 MR. ZINMAN: Yeah, but it indicates service on --

8 THE COURT: I apologize, but we looked and we must  
9 have missed it because of -- hold on let me just -- let me get  
10 there. We looked around. Let me see.

11 MR. ZINMAN: As did I, Your Honor. And it was -- a  
12 colleague of mine emailed it to me.

13 THE COURT: Hold on. Let me see. Let me make sure  
14 that I have it. Hold on.

15 MR. ZINMAN: For some reason, the -- I don't know what  
16 to call it -- the banner across the top with the case number on  
17 the end and what docket number it is did not appear when I  
18 downloaded it from the website moments ago.

19 THE COURT: I don't see it. Okay. All right. So  
20 okay. All right. So we'll know on the 13th which way we're  
21 going.

22 MR. FEUERSTEIN: Yes, Your Honor.

23 THE COURT: Thanks.

24 MR. FEUERSTEIN: Thank you.

25 MR. KHODOROVSKY: Thank you, Your Honor. Have a good

1 afternoon, Your Honor.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 MR. KHODOROVSKY: I assume it's -- again, thank you so  
4 much.

5 THE COURT: Thank you.

6 MR. KHODOROVSKY: Thank you so much.

7 (Whereupon these proceedings were concluded)

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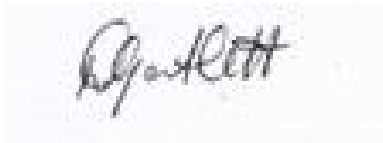
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C E R T I F I C A T I O N

I, Deloris Gauntlett, certify that the foregoing transcript is  
a true and accurate record of the proceedings.



---

Delores Gauntlett

eScribers  
352 Seventh Ave., Suite #604  
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Date: April 5, 2021

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